

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOBBY RAY RHODEN,

Defendant.

No. CR22-4073-LTS

**ORDER**

This matter is before me on a Report and Recommendation (Doc. 110) in which the Honorable Kelly K.E. Mahoney, Chief United States Magistrate Judge, recommends that I grant the Government's oral motion (Doc. 109) to dismiss Count 3 of the superseding indictment. Neither party has filed objections.

As noted by Judge Mahoney, the grand jury returned a second superseding indictment (Doc. 94) on September 14, 2023, which is nearly identical to the superseding indictment (Doc. 69), except that it does not charge Rhoden with Count 3.<sup>1</sup> At the arraignment on the second superseding indictment, the Government orally moved to dismiss Count 3 of the superseding indictment, which defendant does not oppose. Judge Mahoney noted that a "superseding indictment and original indictment can co-exist" and that "a superseding indictment does not in effect dismiss the original indictment." Doc. 110 at 1 (quoting *United States v. Walker*, 363 F.3d 711, 715 (8th Cir. 2004)). As such, she recommends granting the Government's motion by dismissing the entire superseding indictment, which includes Count 3.

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<sup>1</sup> The second superseding indictment also alleges the possession of some additional ammunition not mentioned in the superseding indictment and corrects dates of defendant's prior convictions. See Doc. 94.

Because neither party has objected to the Report and Recommendation, I have reviewed it for clear error. *See, e.g., Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed “[the district court judge] would only have to review the findings of the magistrate judge for clear error.”). I find no error – clear or otherwise – in Judge Mahoney’s recommendation. I agree that dismissal of the entire superseding indictment is appropriate. That will have the effect of dismissing Count 3 alone in light of the fact that the other counts remain intact in the second superseding indictment.

As such, I **accept** the Report and Recommendation (Doc. 110) without modification. *See* 28 U.S.C. § 636(b)(1). Pursuant to the Report and Recommendation (Doc. 110), the Government’s motion (Doc. 109) to dismiss Count 3 of the superseding indictment is **granted** and, as recommended by Judge Mahoney, the entire superseding indictment (Doc. 69) is hereby **dismissed**.

**IT IS SO ORDERED.**

**DATED** this 6th day of October, 2023.



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Leonard T. Strand, Chief Judge